CRIMINAL APPEAL No.508 OF 1987

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1. RAJ KISHORE SINGH
2. GIRISH SINGH ---------- Appellants

Versus

THE STATE OF BIHAR ---------- Respondent

With

CRIMINAL APPEAL (DB) No.571 oF 1987

PALI TANTI ---------- Appellant

Versus

THE STATE OF BIHAR ---------- Respondent

For the Appellants : M/s Anjani Kumar and Vishwa Ranjan Chaudhary,Adv.

For the State : Mr.Lala Kailash Bihari,Sr.Adv.(APP)

P R E S E N T

THE HON'BLE MR.JUSTICE CHANDRAMAULI KR.PRASAD
THE HON'BLE MR.JUSTICE JAYANANDAN SINGH

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Singh,J.: These two appeals have been preferred by two sets of appellants against common judgment and order of conviction and sentence dated 24.09.1987 passed by the 2nd Additional Sessions Judge, Nalanda at Biharsharif in sessions Case No. 161 of 1987. By impugned judgment two appellants of Cr.Appeal No.508 of 1987, namely, Raj Kishore Singh and Girish Singh were convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life. They were further convicted under Section 114 of the Indian Penal Code. However, no separate sentence was awarded for their conviction under the said Section. Appellant Pali Tanti of Cr.Appeal No.571 of 1987 was convicted by the impugned judgment under Section 302 of the Indian Penal Code and was also sentenced to undergo rigorous imprisonment for life. However, he was acquitted of the

charge under Section 27 of the Arms Act as no sanction for prosecution was obtained from the competent authority for prosecuting him under the said section.

2. During the pendency of the appeal, appellant No.2 of Cr.Appeal No.508 of 1987 namely, Girish Singh died a natural death and therefore appeal abates so far said appellant is concerned.

Appellant Pali Tanti of Cr.Appeal No. 571 of 1987 was denied bail during the pendency of the trial as also by this Court while admitting his appeal. As such, he underwent his sentence and after getting remissions he completed the same and has been released from imprisonment.

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3. Prosecution was launched on the statement of one Saryug Ram recorded on 14.07.1984 at about 8:30 P.M. at Harnaut Police Station. He gave statement to the effect that after closing his shop near Durgasthan while he was going to make some purchases, he saw the accused persons coming out from a nearby house. The accused persons proceeded ahead of the informant. While informant was on the road, he saw Raj Kishore Singh and Girish singh stopping in front of a country made liquor shop and ordering the third accused, namely, Pali Tanti to shoot the brother of the informant, namely, Luto Ram. Upon this, said Pali Tanti took out a country made pistol from his waist and shot the brother of the informant Luto Ram, who was sitting in a nearby shop of Tea and Snacks. Informant raised hulla and ran for catching the accused persons. It is further claimed that

the persons accompanying the informant to the police station as well as people from the market also rushed to catch hold of the accused persons but they fled away into the lane. The said Luto Ram sustained injury in his temple and fell down. Therefore, informant and others took the said injured to the police station where the police party was also ready to proceed to the place of occurrence. The informant made statement which was recorded by the Officer-in-Charge of the police station (P.W.9) and F.I.R. was drawn up. The informant was referred to the Government Hospital, Harnaut by the police from where he was further referred to the P.M.C.H., Patna, where he died the next day. After investigation, police submitted charge-sheet against Pali Tanti alone.

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4. Cognizance was taken by the Judicial Magistrate, Biharshariff on 06.07.1985 and by order dated 18.07.1985 the case was committed to the Court of Sessions for trial. By order dated 20.08.1985 of the Sessions Judge, Nalanda the case was transferred to the Court of 3rd Additional Sessions Judge, Nalanda for disposal. On 16.10.1985 evidence started and P.W.1 Sanjay Kumar was examined and cross-examined. In view of the statement of P.W.1, Additional Public Prosecutor appearing in the case on behalf of the prosecution filed a petition under Section 319 of the Code of Criminal Procedure on 16.10.1985 itself for summoning the other two accused persons, namely, Raj Kishore Singh and Girish Singh for facing trial in the case which was

allowed by the trial Court and said two accused persons were also summoned. The said two accused persons accordingly appeared in court. By order dated 29.11.1985 charges were framed against accused persons. Charges under Section 302/34 and 114 of the Indian penal Code were framed against Raj Kishore Singh and Girish Singh and charges under Section 302 of the Indian Penal Code and section 27 of the Arms Act were framed against Pali Tanti. The accused persons denied the charges and claim to be put on trial.

5. During trial, prosecution examined altogether nine witnesses, out of which, P.W. 1, 2 and 3 appeared as eye witnesses. P.W.1 Sanjay Kumar was son of the deceased Luto Ram, P.W.2 was widow of the deceased and P.W.3 Saryug Ram was brother of the deceased and informant in the case. P.W.4 Keshar Ram, brother-in-law of the deceased, was declared hostile and subjected to cross-examination by the prosecution. P.W.5 Saryu Ram, witness to the fardbeyan, was tendered. P.W.6 Yogendra Prasad was witness to the inquest and he proved his own signature as well as signature of Raj Kishore Singh on the inquest report. Dr.R.P.Chaudhary of P.M.C.H., Patna, who had conducted post mortem, was not available and therefore post mortem report prepared by him was proved as Ext.2 by P.W.7 Dr.Anil Kumar Singh, a P.G. student of P.M.C.H., Patna under the authority of said Dr.R.P.Chaudhary. The authority slip given by said Dr.R.P.Chaudhary in favour of P.W.7 was also proved as Ext.3. P.W.8 is the S.I. of police who assumed charge of

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investigation and only submitted charge-sheet in the case. P.W.9 was the investigating officer of the case who recorded the fardbeyan of the informant Sanjay Kumar and investigated the case.

6. On behalf of the defence it was claimed that they have been made accused on the ground of enmity with Mahesh Singh, Ram Dahin Singh and Bindeshwari Singh on whose instigation the informant falsely implicated them in the case. But apart from giving suggestion to the witnesses, no evidence was led or produced in support of their case.

7. Witnesses were examined by the prosecution and cross-examined by the defence. After close of the evidence, arguments were made on behalf of the parties and on the basis of the evidence recorded in the trial and after considering the respective submissions, trial court came to the conclusion that the charges stood proved beyond doubt against accused persons, and therefore, passed order of conviction and sentence against the accused persons, as above. However, since no sanction for prosecution could be produced by the prosecution in support of the charge under Section 27 of the Arms Act against appellant Pali Tanti, said Pali Tanti was acquitted of the charge under Section 27 of the Arms Act.

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8. During the course of hearing, learned counsel for the appellants in both the appeals submitted that the appellants have been falsely implicated in the case. He further submitted that the informant had not

disclosed the name of any witness in the fardbeyan and the witnesses were subsequently set up by the prosecution to support the case of the prosecution. He further submitted that in fact the contents of the F.I.R. show that the informant was the only eye witness to the occurrence and therefore the witnesses who have come forward to claim to have witnessed the occurrence have been subsequently set up. He further submitted that there are vital contradictions in the evidence of P.W.1 and other witnesses which falsifies the prosecution case. It has been further submitted that as per the fardbeyan, other independent witnesses were present at the place of occurrence but they have not been produced by the prosecution which casts doubt on the version of the prosecution with regard to the manner of occurrence and involvement of the appellants. He further submitted that no motive has been assigned in the fardbeyan with regard to the commission of the crime by appellant Pali Tanti. With reference to the evidence of the witnesses, learned counsel for the appellants has submitted that there are other inherent contradictions and discrepancies in the prosecution case which seriously creates doubt about the manner of occurrence and the involvement of the appellants in the same.

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9. Mr.Lala Kailash Bihari Prasad, learned senior counsel appearing for the State submitted that it is a fact that there was prompt report of the case which goes in support of the genuineness of the prosecution case as made out in the fardbeyan. He further submitted that the

major facts and all broader aspects of the prosecution case stand fully established by the evidence of the witnesses and therefore, the prosecution case stands fully corroborated by the evidence of the witnesses and hence the trial court has rightly found the charges against the appellants true and has rightly convicted them.

10. Now coming to the evidence, P.W.1 is the son of the deceased. He has claimed that he along with his mother and uncle i.e. P.W.2 and P.W.3 and his father were at the Tea & Snacks shop. Appellant Pali Tanti asked for a glass which the deceased refused saying that he had already broken one glass. Appellant Pali Tanti complained this to other two appellants, Raj Kishore Singh and Girish Singh, who ordered appellant Pali Tanti to shoot him. Upon this, Pali Tanti took out a pistol from his waist and shot his father. Thereafter, it is said that the deceased was taken to Police Station. From there he was taken to Harnaut Hospital and then to P.M.C.H., Patna, where he died. P.W.1 was subjected to cross-examination by the defence in which he has supported the prosecution case and reiterated the story of asking of glass by appellant Pali Tanti and refusal by his father. He further reiterated that other two appellants had asked appellant Pali Tanti to shoot his father upon which appellant Pali Tanti took out pistol and shot at him. He has said that there was electric line in the shop. In the lengthy cross-examination, P.W.1 has given description of place of occurrence and

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the houses of the locality as well as houses of the accused persons. He has denied the suggestion that appellant Raj Kishore Singh used to collect rent of the house in which his family was residing, although he has accepted that his family was on rent in the house of one Saryu Singh, uncle of appellant Raj Kishore Singh and they used to pay rent to Saryu Singh till his death. After his death, the house came in possession of appellant Raj Kishore Singh. In his cross-examination, this witness has said that his father was sitting on a chauki and when he was shot, he fell down from the chauki and then he was carried to Police Station and thereafter to hospital. His attention was drawn to certain statements made before the court which was not made before the Investigating Officer. However, it appears that this witness has supported the prosecution case on all material particulars. Although he has been subjected to lengthy cross-examination, but nothing substantial has come out from his cross-examination to disbelieve his evidence.

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11. P.W.2 is wife of the deceased. She has claimed that she along with her husband, two sons and two daughters was at the shop at the time of occurrence. In the meantime, appellant Pali Tanti came and asked for a glass in the name of other two appellants and the glass was given to him. Thereafter, again he came to ask for another glass which was refused by her husband saying that he has broken one glass. Appellant Pali Tanti on hearing this, complained to other two

appellants, who ordered to shoot her husband. Upon this, appellant Pali Tanti took out his pistol and shot her husband. She stated that other witnesses present there were P.W.3, P.W.4 and some others. She stated that her husband was taken to Harnaut Police Station from where he was taken to Hospital and then to Patna, where he succumbed to injuries after the bullets were extracted from his body. She was cross-examined by the defence in which she has stated that she did not go to Police Station but had gone to Harnaut Hospital and also to Patna along with her husband. She stated that when She came back from Patna, she was called upon at the Police Station and her statement was recorded by the police. In her cross-examination, she has supported the prosecution case and has given details of the same. She has given the description of manner of occurrence. She has claimed that an attempt was made to catch hold of the appellant Pali Tanti but he fled away and other accused persons also fled away from the place of occurrence. She has denied the suggestion that she was not at the shop and she came to know about the occurrence and due to that reason she had not gone to the Police Station. She has also denied the suggestion that they had grudge against the appellants as they were not paying rent of the house where they were living on rent and the appellant had threatened to evict them and due to that reason, the appellants have been falsely implicated. She has been subjected to detailed cross-examination and the same was placed before us by the learned counsel for the

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appellants but nothing substantial has been pointed out therein to lend support to the defence. Learned counsel for the appellants has not been able to point out any specific or special contradiction or omission in the statement of this witness in order to lend support to his claim that this witness was unreliable or that the appellants have been falsely implicated in this case.

12. P.W.3 is the informant and brother of the deceased. He has supported the prosecution version as given by him. He has stated that after closing his shop at Durga Asthan, while he was coming towards the market, he saw three accused persons coming towards the shop of his deceased brother. When accused persons came in front of the shop of the deceased, accused Pali Tanti asked for a glass which was refused, upon which other two accused persons ordered Pali Tanti to shoot him. Thereupon, accused Pali Tanti shot the deceased from his pistol after taking it out from his waist. He stated that P.W.1, P.W.2 and he had only witnessed the occurrence although there were many people in the shop. This witness has also been subjected to cross-examination by the defence. His attention was drawn to the statement made by him before the police. He has also given details of the place of occurrence and the manner of occurrence. He has denied the suggestion that he was having grudge against the accused persons on account of the fact that the accused persons were asking to vacate the house where they were living. This witness has stated in his cross-examination that first time his

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brother (the deceased) had given a glass and snacks (litti) to accused Pali Tanti, who after taking the same went to the house of appellant Raj Kishore Singh. After some time, appellant Pali Tanti again came and asked for a glass which the deceased refused. The evidence of this witness has been placed by learned counsel for the appellants in extenso. However, from the tenor of his evidence it appears that he has substantially supported and proved the prosecution case and nothing specific has come out in his evidence to disbelieve the prosecution version. It appears that this witness has substantially supported and proved the earliest version of the prosecution case given out by him in his fardbeyan with regard to factum and manner of occurrence and involvement of the accused persons in the same.

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13. P.W.4 is the brother-in-law of the deceased. He has been declared hostile by the prosecution and has been subjected to cross-examination. He denied the suggestion that he had said before the police that when on hulla he came to the place of occurrence he saw Pali Tanti and two other persons running away in the lane. He admitted that he was signatory to the fardbeyan. Nothing substantial has come out in his evidence which may lend support to the defence.

14. P.W.5 has been tendered by the prosecution and has been subjected to cross-examination by the defence. In his cross-examination also nothing has come out to lend support to the defence.

15. P.W.6 is the inquest witness, who has proved

his signature on the inquest. He has also proved the signature of appellant Raj Kishore Singh on the inquest report.

16. P.W.7 is a Post-Graduate student of Forensic Medicine Department of Patna Medical College and Hospital. He has proved the post-mortem report prepared by Dr.R.P.Chaudhary which has been exhibited as Ext.-2. He has further proved the authority slip given by Dr.R.P.Chaudhary for appearance in court on his behalf for the purpose which has been exhibited as Ext.-3.

17. P.W.8 is the Sub-Inspector of Police, who at subsequent stage after recording of evidence of all the witnesses by the previous Investigating Officer, only submitted charge sheet. In his cross-examination, he stated that he did not take any step in the investigation of the case.

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18. P.W.9 is the main Investigating Officer of the case. He has stated that at about 8.30 P.M. the informant came with the deceased to the Police Station in injured condition and recorded his fardbeyan which was read over to him and after finding it correct the informant put his signature on it. Thereafter, the deceased was sent to Harnaut Hospital. He stated that he had taken the statement of P.W.4 and P.W.5 also and thereafter he went to the place of occurrence and inspected the same. He has given the description of the place of occurrence. He found blood fallen at the place and articles of cooking scattered. He stated that the blood had dipped in the earth in such a manner that it

was not possible to collect the sample for forensic test of the same. He further stated that at the place of occurrence he recorded the statement of P.W.1 and P.W.2. He went to the hospital where he came to know that the deceased had been referred to P.M.C.H., Patna. Next day he was informed that the deceased had died at P.M.C.H. and therefore, he converted the case into one under section 302 of the Indian Penal Code. He stated that he arrested accused Pali Tanti on 24.7.1984 and filed a petition in the court of Chief Judicial Magistrate for recording his statement under section 164 Cr.P.C. Thereafter, he handed over the charge to one Officer In-charge Vijay Kumar Yadav (P.W.8) as he had been transferred. In his chief itself, his attention had been drawn to the statement made by P.W.4 before him in which he had stated that when P.W.4 came running he had seen accused Pali Tanti and two others fleeing away in the lane. This witness has been subjected to cross-examination and in the cross-examination, he has given details of the place of occurrence. He has stated that he did not find any chauki or empty cartridge at the place of occurrence. He said that he did not find any blood stained clothe of the deceased. His attention was drawn to certain statements made by P.W.1, P.W.2 and P.W.3 in court and it has been admitted by him that some statements which the witnesses have made in court had not been made before him by them during investigation.

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19. From the cross-examination of this witness, learned defence counsel has pointed out that there have

been certain discrepancies in the evidence of P.W.1, P.W.2 and P.W.3 as recorded in court vis-à-vis their statements made before the Investigating Officer during investigation. However, from specific contradictions or omissions as evident from the attention drawn to this witness by the defence, it appears that there has been no deviation or omission in the statement of the witnesses on material particulars of the prosecution case and the prosecution case as disclosed in the fardbeyan by P.W.3 at the initial stage itself stands fully corroborated by the witnesses. The contradictions or omissions in the statement is not of much consequence and cannot lead to the inference of falsity of the prosecution case or false implication of the accused persons.

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20. Learned counsel for the appellants has drawn the attention of this Court to the post-mortem report to point out that there was tattoo mark on the body of the deceased near the place of entry of wound and has submitted that as per post-mortem report, firing was made from close range. However, from the evidence of the witnesses, it appears that the deceased was shot by accused Pali Tanti from a distance which stands contradicted by the distance of tattoo mark on the body of the deceased near the entry point. He has pointed out that in the opinion of the doctor who conducted post-mortem, fire arm injury was caused from a close range within two and a half feet. But this itself cannot be a basis for disbelieving the prosecution version inasmuch

as rustic people do not have very accurate estimate of distance and estimate of distance by ocular evidence of different persons at the place of occurrence may vary.

21. Therefore, the submission of the learned counsel for the appellants that the evidence of the witnesses that firing resorted to by appellant Pali Tanti upon the deceased was from longer distance does not find support from the post-mortem report is not of much material significance.

22. It is relevant here to state that no specific overt act has been alleged against appellant Raj Kishore Singh and only role attributed to him is that of order giver. It is well known that in this part of the country it is common to assign the role of order giver to the person with whom prosecution is on inimical terms. This is easy to attribute and prove as for such allegation, except the oral testimony no other form of evidence is possible to be laid. Suggestions have been made to the witnesses that since Raj Kishore Singh had come in possession of the property of Saryu Singh in which the deceased and his family were living as a tenant and that Raj Kishore Singh had threatened to evict them due to which they were carrying some grudge against this appellant, but this suggestion has been denied by the witnesses and although it is admitted that the deceased and his family were living in the house of Saryu Singh and after the death of Saryu Singh, Raj Kishore Singh may have come to own the property. Moreover, it is an admitted fact that Raj Kishore Singh

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was a signatory to the inquest report which shows that he may have accompanied the deceased to PMCH, which is a strong circumstance against the charge of his involvement in the crime. In the face of this, we feel it unsafe to sustain the conviction of appellant Raj Kishore Singh and, therefore, we grant him benefit of doubt.

23. In the result, Cr.Appeal No.508 of 1987 filed by appellant Raj Kishore Singh is allowed, his conviction and sentence is set aside and he is discharged of his bail bond. Cr.Appeal No.571 of 1987 preferred by appellant Pali Tanti, however, stands dismissed.

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(Jayanandan Singh,J.)

Prasad,J: I agree.

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(Chandramauli Kr.Prasad,J.)

Patna High Court
The 9th July, 2008
N.A.F.R./Pradeep.